

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE SIDE JURISDICTION.

CIVIL APPLICATION NO.4378/2013
IN
FIRST APPEAL (ST) NO.23872/2013

ICICI Lombard General Insurance Co. Ltd. ... Applicant

Vs.

Manisha Vasant Chavan & Ors. ... Respondents

Ms. Varhsa Chavan for the Applicant
Mr. S. R. Moray i/b. V. S. Talkute for the Respondent Nos.1 and 4.

CORAM : K. K. TATED, J.
DATE : JULY 10, 2015

PC.:

1. Heard. None for Respondent Nos.2 to 3 though duly served.
2. This Application is preferred by the Insurance Co. for condonation of 353 days delay in filing the appeal challenging the award dated 29/04/2010 and 08/08/2012 passed by the MACT, Satara in MACP No.234/2008.
3. The learned counsel for the Applicant submits that in the present proceedings, initially the MACT Satara passed award dated 29/04/2010 holding that only owner of the offending vehicle is responsible to pay compensation to the Respondent-Claimant. He submits that thereafter the owner of the vehicle preferred Revision Application No.7/2010 on 25/06/2010. On the basis of the said review

petition, the Tribunal passed order dated 08/08/2012 holding that the owner as well as the Insurance Co. is liable to pay compensation to the Respondent-Claimant.

4. The learned counsel for the Applicant submits that they applied for certified copy of the impugned order on 09/08/2012 which is made available on 31/08/2012. Thereafter the same was forwarded to the Branch office of the Insurance Co. On perusal of the order passed by the Tribunal, the Applicant decided to prefer the First Appeal in this court. Thereafter the papers were forwarded to the Mumbai Office with their recommendations. On perusal of the file, the Authority at Mumbai office decided to file the present appeal. Thereafter, the papers were forwarded to the Advocate in November 2012. She submits that the Advocate called upon the concerned officer to deposit the amount towards court fees and statutory amount which is required to deposit before filing an appeal in this court. She submits that the concerned officer took some time to deposit requisite amount of court fees and statutory amount. As such, there is delay in preferring the First Appeal. She submits that as soon as the amount is made available to the Advocate, the First Appeal was filed in this court on 02/08/2013.

5. The learned counsel for the Applicant submits that the Applicant has good chance of success in the matter. She submits that initially, the Tribunal held that the Insurance Co. is not liable to pay any compensation. On the basis of the review petition filed by the owner of the offending vehicle, the Tribunal, by order dated 08/08/2012 held that the Insurance Co. is also liable to pay compensation. She submits

that if delay is not condoned, irreparable loss, harm and injury will be caused to the Applicant.

6. On the other hand, the learned counsel for the Respondent No.1 and Respondent No.4 - owner of the offending vehicle opposed the Civil Application. The learned counsel for the Respondent No.4 filed Affidavit in Reply dated 25/06/2015. He submits that the Applicant has not shown sufficient cause for condonation of inordinate delay in filing the First Appeal. He submits that the Applicant has not explained the following particulars in the Civil Application:

- a. Date on which the Officer in-charge forwarded the order to the Mumbai office with his recommendations.
- b. Date on which the competent authority of the Mumbai office opined that the appeal is required to be preferred.
- c. Date on which the Advocate sent a letter to the Applicant asking for a certified copy of the order and amount for payment of court fees etc.
- d. The reasons for not depositing the court fees in time.

7. The learned counsel for the Respondent Nos.1 and 4 submits that these facts are not disclosed by the Applicant in their Application. He submits that the Applicant has made vague statements in their Application about the opinion from the Chief Officer and sending files from one Department to other Department. He further submits that, the Apex Court in the matter of *Union of India and Ors. Vs. Tata Yodogawa Ltd. and Anr. MANU/SC/0694/1988* held that the inter departmental correspondence and processing of the matter to enable

the Department to file petition to be explained in proper way. If it is not explained, the court should not condone the delay. In that case, the delay was of only 51 days. The learned counsel for the Respondent Nos.1 and 4 also relies on the judgment of this court in the matter of ***Union Bank of India and others Vs. Arphi Incorporated*** ***MANU/MH/0272/1988***, particularly para 2.

8. On the basis of the aforesaid authority, the learned counsel for the Respondent Nos.1 and 4 submits that there is no substance in the Civil Application. Same be dismissed with costs.

9. Heard both sides at length. It is to be noted that, to file an appeal on behalf of the corporation, they have to take permissions at several level. Initially, the Tribunal held that the Insurance Co. is not liable to pay compensation. Thereafter, the Respondent Nos.1 and 4 filed Review Petition, wherein the Tribunal, by its award dated 08/08/2012 held that the Insurance Co. is also liable to pay compensation jointly and severally to the original claimants. The explanation given by the Applicant that they immediately applied for certified copy of the Award and as soon as it is made available, they forwarded the same to the concerned Officer to take decision, is sufficient cause for condonation of delay.

10. It is to be noted that the Apex Court in the matter of ***N.Balkrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123*** held that the object of fixing the time limit is not meant to destroy the rights. The law of limitation fixes a lifespan for such legal remedy for the general welfare. Paragraph Nos.11, 12 and 13 of the said judgment read thus:

“11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.”

“12. A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" Under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari, 1969 SC 575 and State of West Bengal v. The Administrator, Howrah Municipality, AIR 1972 SC 749.”

“13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a

loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."

11. Even this court, in the matter of ***Baburao Deorao Wankhede Vs. Sewa Sahakari Sanstha and Ors. 1989 Mah.L.R. 1144*** held that the length of delay is not important. Court condoned the delay of more than 10 years in that case. Similar view was taken by the Apex Court in the matter of ***State of Haryana Vs. Chandra Mani & Ors. JT 1996 (3) SC 371***.

12. Considering the reasons disclosed by the Applicant in Civil Application and the law laid down by the Apex Court as stated above, I am of the opinion that the Applicant has made out a case for allowing the Civil Application. At the same time, the Applicant has to pay cost to the Respondent.

13. Hence, following order is passed:

- a. Delay of 353 days in filing the First Appeal is condoned.
- b. The Applicant Insurance Co. to pay cost of Rs.5000/- to Respondent No.4 within 4 weeks from today, failing which the Civil Application shall stand dismissed without further reference to the court.
- c. Civil Application stands disposed of accordingly.

JUDGE